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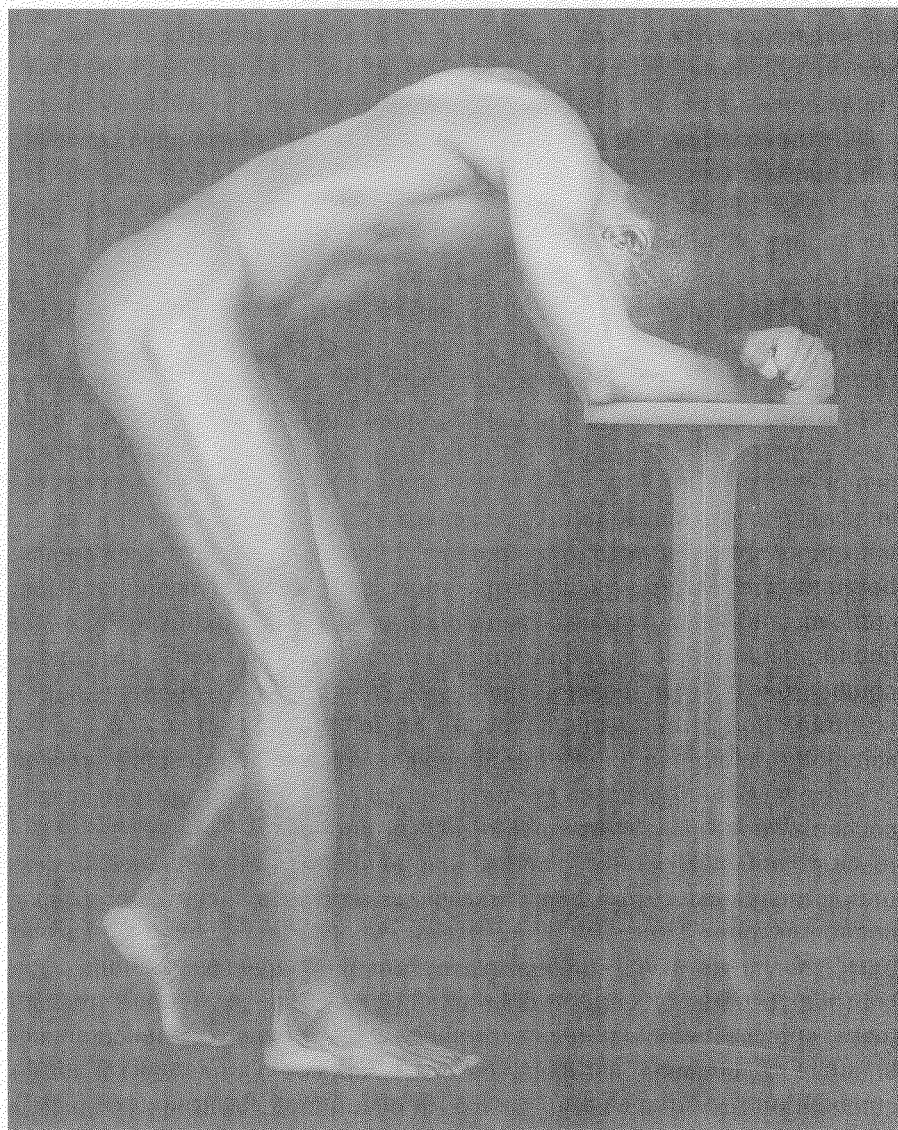
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Thomas, 1986
Robert Mapplethorpe

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The Sensitive Society

James F. Fitzpatrick*

We are living increasingly in the "Sensitive Society." I use the term "sensitive" not in its meaning of "caring" or "sympathetic." Rather, I use it to mean a society that is thin-skinned, ready to take offense, intolerant of criticism or satire, and which rejects honest or misguided disagreement. This is *not* the world of Mark Twain, Ambrose Bierce, or H.L. Mencken. Comment, observation, satire, reportage, editorials, cartooning, caricature, playwriting, and painting—all are now supposed to take into account the sensibilities of the reader or observer. That feeling undergirds a great deal of the controversy about art today, and poses a great potential threat to artistic and creative freedom in the future.

The history of the Mapplethorpe debate¹ was one that deeply

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On May 14, 1994, one week after speaking to the graduating class of the Indiana University School of Law-Bloomington, the Author delivered this commencement address at the Corcoran School of Art in Washington, D.C. A graduate of the Law School and member (and former president) of its Board of Visitors, the Author is perhaps best known for his ardent defense of First Amendment rights. He has served as pro bono counsel to many art communities, opposing legislative and judicial efforts to impose content restrictions on federal art grants, and he has served as President of Washington Project for the Arts and on the boards of the American Civil Liberties Union, the Shakespeare Theater in Washington, and the British American Arts Association. The Author's edited address is included with the kind permission of the Corcoran School of Art.

1. A planned exhibit of the photographs of Robert Mapplethorpe, funded by the National Endowment for the Arts (NEA), was cancelled by the Corcoran Museum in 1989 after Senator Jesse Helms charged that the exhibit included "obscene" photographs. Grace Glueck, *Art on the Firing Line*, N.Y. TIMES, July 9, 1989, at B1. It subsequently was presented by the Washington Project for the Arts. After the Mapplethorpe exhibit opened in Cincinnati, the host museum and its director were indicted for allegedly violating criminal obscenity laws. They were subsequently acquitted by a jury. Isabel Wilkerson, *Cincinnati Jury Acquits Museum in Mapplethorpe Obscenity Case*, N.Y. TIMES, Oct. 6, 1990, at A1. Congress responded to the controversy by forbidding the NEA from funding allegedly "obscene" art. Pub. L. No. 101-512, 104 Stat. 1960, 1962 (codified at 20 U.S.C. §§ 951-74 (1988 & Supp. II 1990)). The prohibition was struck down as unconstitutional in *Finley v. NEA*, 795 F. Supp. 1457 (C.D. Cal. 1992), and *Bella Lewitzky Dance Found. v. Frohnmayer*, 754 F. Supp. 774 (C.D. Cal. 1991). The Chairman of the NEA, John Frohnmayer, was subsequently fired by President George Bush during his reelection

involved the arts community in the "Sensitive Society." My first exposure to this issue was June 19, 1989. That very day an invitation had arrived at our house announcing the opening of the Mapplethorpe exhibit. We went to a dinner party that night and my dinner partner, who was a strong supporter of the Corcoran, as we all were, announced with some astonishment that the museum had just cancelled the Mapplethorpe exhibition. She was a major underwriter of the show. I asked whether, if we could get permission from the Mapplethorpe Foundation to do the show at the Washington Project for the Arts (WPA), we could have her \$20,000. She said that we could. We went around the table that night and got enough pledges to underwrite the show.

The next morning the head of the Mapplethorpe Foundation flew to Washington; we toured the WPA facilities and by 1:00 P.M. we had come to an agreement that we would do the Mapplethorpe exhibition. In just two weeks, over 50,000 people came to see the show. That record was replicated across the country where more than a half million people saw the show at seven different venues.

You know the subject matter. Along with stylized, formal floral arrangements and chic portraits of celebrities, there were a few pictures that explored the netherworld of male sexuality and there were a couple of portraits, commissioned by their parents, of nude children.

I can report that after looking at the Mapplethorpe photographs at the WPA, there was no rioting, widespread fainting, and no heavy breathing. People who saw the show almost universally applauded the efforts to put it on. One grandmother, after viewing Mapplethorpe's images of male members, told us with some jocularly that she was happy to see that things like that still existed, something that she remembered from her distant youth. Another older lady told us that she was so offended that she saw the show three times!

One key lesson emerged from this experience—images are much more titillating in the describing than in the seeing. Another important lesson is that controversy and the threat of censorship sells. Before this brouhaha, Mapplethorpe's large photographs sold for \$3,500. After the controversy, they sold for \$40,000 to \$50,000. This reflects one of the immutable lessons of those who would attempt to deny society the opportunity to look for itself—censorship never, never works.

But, the Mapplethorpe exhibition did spawn a prolonged debate over appropriate content standards for government support for the arts. The issue about what society looks at, reads, and hears became the newest assault on

campaign.

freedom. What the right-wing critics wanted, in fact, was that only "acceptable" art be funded by the NEA—and that means what was acceptable to Senator Helms, the Robespierre of modern American society. They wanted art that is straight, Christian, bland, pro-flag, anti-abortion—all the elements of red-blooded Americanism. However, our society is simply too heterogeneous and too diverse to have officially sanctioned, acceptable art. As Robert Hughes has written: "This has always been a heterogeneous country, and its cohesion, whatever cohesion it has, can only be based on mutual respect. There never was a core America in which everyone looked the same, spoke the same language, worshipped the same gods and believed the same things."²

The concept of "acceptability" as an element of *government* decision making, then and now, must be firmly and unqualifiably rejected. It is clearly inconsistent with the tenets of a free society to have a government stamp of approval on acceptability. Experiences with repressive societies—the Nazis in the 1930s and the Russians in the 1920s and 1930s—provide dramatic and painful lessons of a government's definition of "acceptability." A central lesson is that in a repressive society, artists are the first victims. By nature they are independent, questioning, and unconventional—the very qualities a repressive society cannot stand.

But fighting off Jesse Helms and his form of orthodoxy is the easy part. Resisting orthodoxy from the political left is much more demanding.

One such current manifestation of the "Sensitive Society" is the concern over political correctness. Artists have a strong stake in opposing "correctness" of *any* sort. The impulses behind this "correctness" are, in fact, ones that many of us identify with. We should not be encouraging homophobia, or tolerating racial intolerance or sanctioning anti-feminist views. But I fear that when those sentiments transcend individual reactions and create strong social pressures to conform, then there inexorably is a danger to creativity and individualism. And the artist has the most to lose if there is an imposed orthodoxy, either from the right or the left.

The "Sensitive Society" is a sharp departure from the way we have historically viewed the rights of free expression in this country. For decades, the primacy has been the freedom of the speaker, the creator. The theory, going back centuries to Milton, is that the truth will come out if there is a cacophony of competing viewpoints.³ Under that approach, the bigoted comment will, in the long run, be overcome by voices of reason and tolerance. Historically, a speaker's rights under the First Amendment

2. ROBERT HUGHES, *CULTURE OF COMPLAINT* 17-18 (1994).

3. JOHN MILTON, *AREOPAGITICA* (Everyman ed., 1st ed. 1875) (1644).

have not been limited simply because they might cause outrage in the audience. It was only when a speaker's comments could create a severe public disturbance that one might consider a limitation on the speaker's voice.⁴ And even in those circumstances, the government would be required to have sufficient force on hand to protect the controversial speaker.

That view is changing in contemporary society. There is a new paradigm—one is increasingly concerned with the sensibilities of the listener, not the rights of the speaker. Shouting "water buffaloes" from a dorm room, no matter that it may have had a nonracial intent, can engage a student in a protracted and complicated process.⁵ Disciplinary codes in universities are now designed to weigh the acceptability of these comments, even some that are ludicrously trivial, in somber, formalized judicial proceedings.⁶

I would suggest that the artist has the strongest stake in opposing this viewpoint. An artist's role is to follow the muse, or at least to follow one's own sensibility, in attempting to portray the truth of a particular subject. Sometimes that truth, as seen by the artist, is offensive. As Jane Alexander recently said, "Artists challenge, ask difficult questions, and rattle our cages. They can make our skin itch, our souls bristle, and they can touch us to the heart's deep core."⁷

Sometimes an artist's truth might offend the religious right. Sometimes it might offend the American Nazi party. Sometimes an artist's truth might offend the pre-deified President Nixon. Sometimes it might offend Franklin Roosevelt or John Kennedy or Lyndon Johnson or Jimmy Carter. Sometimes it might offend the Catholic Church. Or it might offend right-to-lifers, and sometimes free-choicers. Sometimes it might offend

4. See *Cantwell v. Conn.*, 310 U.S. 296, 308 (1940).

5. In 1993, Eden Jakobwitz, a first-year student at the University of Pennsylvania, yelled through his dorm room at a group of noisy students outside, "You water buffaloes! If you are looking for a party, there is a zoo a mile away." The students, it turned out, were African-American, and Jakobwitz was charged by the University with violating its speech code. Jakobwitz denied any racist intent; he claimed that "water buffalo" was a translation of the Hebrew word "behamah," meaning foolish person. "The University of Pennsylvania, in a series of bizarre moves which made the Star Chamber look like the avatar of due process, proceeded to self-destruct in public. It insisted on pressing the prosecution Only the withdrawal of the complaint—blamed on unfavorable press reaction—saved Penn from complete immolation." Burton Caine, *The Dormant First Amendment*, 2 TEMPLE POL. & CIV. RTS. L. REV. 227, 245-46 (1993).

6. See *UWM Post, Inc. v. Board of Regents of Univ. of Wis.*, 774 F. Supp. 1163, 1167-68 (E.D. Wis. 1991); *Doe v. University of Mich.*, 721 F. Supp. 852, 857 (E.D. Mich. 1989).

7. Jane Alexander, Speech at the National Endowment for the Arts' Art-21 conference (Apr. 1994) (copy on file with Author).

Robert Hughes, or Hilton Kramer, or even Paul Richard at the *Washington Post*.

Playwright and poet Thulani Davis said in her keynote address to the National Endowment for the Art's Art-21 conference in Chicago last April: "Artists have been in harm's way because they refuse to give up ideas in order to entertain."⁸ Simply put, the expression of the artist's talent and genius, which is at the heart of our constitutional concept of free speech, should not be judged on whether the sensitivities and beliefs of any audience are ruffled. There must be other ways of arriving at the truth, rather than silencing the speaker. Moreover, sadly, this instinct to silence speech (and necessarily silence artistic creativity), poses a severe strain on those artists who are laying out their souls trying to describe the truth as they see it, on canvas, in sculpture, or in a dark room.

Lawyers are, to some extent, expected to be involved in public service projects, helping the disadvantaged to secure their full constitutional and legal rights. In law this is called a *pro bono* program, and it is relatively easy because such participation is consonant with the lawyer's role as a public figure.

However, undertaking a similar obligation may be much more complicated for the artist—but it should be done. I was struck by an article in the *Washington Post Book Week* describing Cormac McCarthy, the Pulitzer winner for his novel *All the Pretty Horses* and now the rage in literary circles. McCarthy was described in Greta Garbo terms: "He never wanted anything more than to be left alone to write."⁹ This captures the view of the artist whose only goal is to create one's work. However, both as a matter of protecting and enhancing one's rights to creative freedom and as an essential element of our universal obligation to support a better society, artists cannot stand aside and let others carry that cause.

8. Thulani Davis, *Masterpieces for a Mixed-Up Age*, WASH. POST, May 1, 1994, at G3.

9. David Streitfeld, *Book Report*, WASH. POST, May 8, 1994, at X15.

